

**APPENDIX D**

**FEDERAL INSTITUTIONAL REQUIREMENTS**

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For any dredging or disposal activity that is regulated, planned or funded by Federal authority, the activity would be addressed under a series of laws and their implementing regulations. These laws would apply to any of the disposal alternatives proposed for use in Long Island Sound. In addition, some disposal alternatives may have laws and regulations that would have specific applicability to that type of disposal.

-- National Environmental Policy Act of 1969 (NEPA, 42 USC 4321).

All activities must be assessed for their environmental impact and impact statements would be required for major Federal actions that would significantly affect the quality of the human environment. A review of a project's need, alternatives and impacts are principal elements covered under this law.

-- Fish and Wildlife Coordination Act of 1958 (FWCA; 16 USC 661).

All activities must be reviewed and coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in accordance with the amendments of this act. The Service would provide technical expertise on wildlife resources and input their concerns for the quality of aquatic and terrestrial environments as they relate to conservation, protection, improvement and the enjoyment of fish and wildlife resources.

-- Endangered Species Act of 1973 (16 USC 1531). All activities must be reviewed and assurances provided for the conservation of endangered or threatened species. Agencies have to insure that any action will not jeopardize the continued existence of endangered or threatened species, or result in the destruction or modification of a species habitat which has been determined critical by the Secretaries of the Interior and Commerce.

--Coastal Zone Management Act of 1972, Section 307 (16 USC 1456).

The act requires Federal agencies conducting activities that directly affect a State's coastal zone to comply, to the maximum extent practicable, with an approved state coastal zone management program. It also requires that no Federal license or permit be granted to non-Federal applicants until the State has issued a certification concurring that the proposed activity complies with the State's CZM program.

-- Rivers and Harbors Act of 1899, Section 10 (33 USC 403). Unless authorized by the Secretary of the Army, this act prohibits the obstruction or alteration of any navigable water of the United States. Within these waters a permit from the Corps is necessary for any construction in or above these waters, for any excavation from or deposition of materials into such waters, or for any work that could affect the course, location, condition, or capacity of such waters. Likewise, any similar Corps activity also requires authorization by

the Secretary of the Army. Even though this act would not specifically apply to deep ocean disposal, all activities related to dredging within waters of the United States, including disposal of the materials dredged, would be reviewed under the Corps Section 10 permit authority.

-- National Historic Preservation Act of 1966. Under this act the Secretary of Interior maintains and revises the National Register of Historic Sites. The register is a list of buildings, sites, districts, structures and objects of local, state or national significance in American history, architecture, archaeology and culture. Federal agencies are responsible for identifying National Register properties and for assessing the impact of any Federal activity on them. The intent is to preserve the historical and cultural foundations of the Nation. In addition, the Archaeological and Historic Preservation Act of 1974, also provides for the preservation of historical and archaeological data that would otherwise be lost or destroyed by a Federally funded or licensed project. The act authorizes up to one percent of a project's cost to be spent on mitigation and the recovery of archaeological data.

Legal considerations having specific application to the deep ocean disposal alternative and to the near shore disposal alternative for sites beyond the baseline and for disposal in Long Island Sound.

-- Marine Protection, Research and Sanctuaries Act of 1972, "Ocean Dumping Act," Section 103 (16 USC 1432). This section of the act was created specifically for the Corps of Engineers to regulate the transportation of dredged materials from the United States for disposal into ocean waters. Regulating ocean disposal is accomplished through the application of the Corps permit regulations (33 CFR 320) which utilizes the Environmental Protection Agency's (EPA) ocean disposal criteria (40 CFR 220). The criteria is used for determining whether dredged materials will be environmentally acceptable for ocean disposal and disposal in Long Island Sound. (A 1981 Amendment to the Ocean Dumping Act requires extension of ocean dumping criteria to Long Island Sound for private projects in excess of 25,000 cubic yards.) The Corps must also apply the ocean dumping regulations to its own projects and programs. Under the 103 regulations, disposal sites designated by the EPA are to be used wherever feasible. The Corps may determine whether an economically feasible alternative to ocean dumping exists. In the event that no such alternative exists, the EPA administrator may grant a waiver.

Legal considerations having specific application to near shore disposal (for sites within the baseline), river and harbor disposal, along shore and near shore containment, beach restoration and upland disposal with an overflow into U.S. waters.

-- Clean Water Act of 1977, Section 404 (33 USC 1344). This act would apply specifically to the above alternatives if they involve the disposal of dredged material, or the drainback of containment basins, into a waters of the United States. The act requires that a permit be obtained from the Corps of Engineers for any discharge of dredged or fill material into such waters. A disposal site would be selected and used in accordance with the 404 guidelines developed by the Environmental Protection Agency. In similar fashion to the permit program, the Corps' own projects and programs must adhere to the guidelines as well. If the guidelines prohibit the selection or use of a disposal site the Corps may then consider the economic impact on navigation of such a prohibition. Ultimately, the EPA could prohibit or restrict the use of a disposal area if the disposal would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife or recreation areas.

Legal considerations having specific application to upland disposal (with no drainback) and to other upland resource reclamation options.

-- Resource Conservation and Recovery Act of 1976. This Act provides for a qualified prohibition on the open dumping of solid or hazardous wastes and provides for a comprehensive scheme for managing hazardous wastes. Waste management would be accomplished in accordance with the guidelines established by the Environmental Protection Agency.

The EPA's suggested guidelines proposes solid waste management through coordinated effort in collection, source separation storage, transportation, transfer, processing, treatment and disposal. At a minimum, waste management is aimed to recover useable resources and to protect public health and welfare through environmentally sound disposal practices. The EPA considers that dredged material is subject to this act and would be classified as a "hazardous waste" if it does not pass the "EPA toxicity" criteria. However, at this time the EPA is reviewing policy and interpreting the act to refine its applicability to dredged material.

Presented above were the summaries of several laws that normally play an important role when considering disposal alternatives. Listed below are four legal considerations that do not normally play a significant role but may become relevant on a case-by-case basis.

-- Safe Drinking Water Act of 1972

-- National Shellfish Sanitation Program

-- Marine and Estuarine Sanctuaries Programs

-- Clean Air Act amendments of 1977